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REPORT OF THE COMMITTEE ON RELATIONS WITH THE HOST COUNTRY

Letter dated 12 April 1996 from the Chargé d'affaires a.i. of the Permanent Mission of the Sudan to the United Nations addressed to the Secretary-General

I have the honour to bring to your attention a highly unjustifiable measure taken by the Government of the United States of America against one of the diplomatic staff of the Permanent Mission of the Sudan to the United Nations.

On 9 April 1996, the United States Mission to the United Nations required the Second Secretary in the Mission, Mr. Ahmed Yousif Mohamed, to leave the United States within 48 hours, alleging that he was engaged in terrorist and espionage activity.

The said action by the United States constitutes an illegal demand under the Headquarters Agreement and other relevant international norms.

In New York, the legal status of permanent missions of Member States and their personnel and the scope of their privileges, immunities and exemptions are governed by the relevant provisions of Article 105 of the Charter of the United Nations, the 1946 Convention on the Privileges and Immunities of the United Nations, the 1947 Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations as well as by the provisions of 1961 Vienna Convention on Diplomatic Relations applicable mutatis mutandis.

It should also be noted that important principles and norms regulating relations between States and international organizations such as the United Nations and its specialized agencies have been codified in the 1975 Vienna

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Convention on the Representation of States in their Relations with International Organizations of a Universal Character. Even though that Convention is not yet in force, it represents a significant development of principles and norms on the matter.

While the scope of the privileges and immunities, as well as exemptions and facilities of missions and their personnel, is regulated in various degrees of detail by the above-referenced instruments, questions of the right of the host country to expel members of missions for allegations of abuse of immunities are not adequately addressed by any of the above-referenced instruments. Those instruments which contain specific provisions on the matter have laid down specific procedures to be invoked in order to resolve contentious situations.

In accordance with section 13 (b) of the 1947 Headquarters Agreement, 1/ a person entitled to diplomatic immunities in case of abuse of privileges of residence outside his official capacity is not exempt from "the laws and regulations of the United States regarding the continued residence of aliens".

The drafters of the Agreement envisaged cases where the host country may misuse its prerogative under this provision because mission staff are not accredited to the United States Government but to the United Nations and accordingly the Agreement set out a stringent condition on the exercise of that right by the host country. Under article IV, section 13 (b) (1), "No proceedings shall be instituted under such laws or regulations to require any such person to leave the United States except with the prior approval of the Secretary of State. Such approval shall be given only after consultation with the appropriate Member in the case of a representative of Member ..." [emphasis added]. Moreover, paragraph (2) of section 13 (b) expressly grants "a representative of the State concerned ... the right to appear in any such proceedings on behalf of the person against whom they are instituted".

The unilateral decision of the United States to expel the Second Secretary of the Sudan Mission, Ahmed Yousif Mohamed, runs contrary to the obligations incumbent upon the United States under the express terms of the Agreement. The legitimate expectation was that the United States Government is obliged to report whatever charges it may have against him immediately to the Sudan Government and provide the necessary evidence to substantiate its claim. However, the United States Government has failed to come forward to press official charges, or to consult the Sudanese Government prior to taking its decision. It is not easy to understand why it had taken so long to charge him with these false pretensions.

The requirements of consultation with and representation of the Member concerned under the Agreement is a prerequisite to any proper exercise of right of expulsion. The failure of any organ of the American authorities to follow the required procedure is attributable to the United States Government.

In accordance with section 25 of the 1947 Headquarters Agreement the United States shall have the ultimate responsibility for the fulfilment of any obligations imposed by the Agreement on the appropriate American authorities.

The practice of the United Nations itself lends support to this position. The General Assembly has repeatedly affirmed that "the problems related to the privileges and immunities of all missions accredited to the United Nations ... are of great importance and concern to Member States, as well as the primary responsibility of the host country" (resolution 41/82, preamble).

The General Assembly also requests the Secretary-General to remain actively engaged in all aspects of the relations of the United Nations with the host country, and to continue to stress the need for pertinent measures adopted by the host country to be in accord with the Agreement and its other relevant obligations. Within this context, the Sudan Government asks whether the Secretary-General is currently involved at all. If so, to what extent has he been actively engaged in this incident?

As to the substance of the allegations against the diplomat, the Sudan Mission to the United Nations rejects as totally fabricated and groundless the assertions to the effect that some of its members engage in activities which bear no relation to United Nations affairs. The manifestations of pressure by the United States are regarded by the Sudan Government as yet another hostile act substantially impeding the discharge of the duties of the Sudan Mission in the United Nations. The measures adopted against the Sudanese diplomat amount to a naked action by the host country to reduce the size of the Sudan Mission and thus directly undermine the importance of the role played by the United Nations and the missions accredited to it in the strengthening of international peace and security.

The said action by the United States is arbitrary and groundless and constitutes a flagrant violation by the United States of the obligation it undertook, as the host country of the United Nations Headquarters, to ensure the necessary conditions for the normal functioning of the United Nations and the unhampered participation in its work by States members.

I have the honour to request that the present letter be circulated as a document of the General Assembly, under item 152 of the preliminary list, and brought to the attention of the Committee on Relations with the Host Country.

(Signed) Hamid Ali ELTINAY
Chargé d'affaires a.i.

Notes

1/ United Nations, Treaty Series, vol. II, No. 147.